

Date of decision: 11-4-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J  
(11-4-96)

Mr. R. R. Tripathi for Mr. P.B. Majmudar for the petitioner.  
Mr. D.A. Bambhania for the respondents.

ORAL JUDGMENT:

The petitioner was appointed as junior clerk in the Kheda District Panchayat at Nadiad by order dated

12-11-1968. He was placed under suspension on 12-7-1975 in connection with a criminal case. For the misconduct of remaining absent his services were terminated, but it appears that he was taken back in service on 16-2-1979. The clerical staff working in the District Panchayat were asked to give their option for remaining in clerical cadre or accounts cadre. The petitioner opted for accounts cadre. Under order dated 30-1-1981 the petitioner was promoted to the post of Senior Accounts Clerk on adhoc and temporary basis. This promotion of the petitioner was subject to the approval by the Gujarat Panchayat Services Selection Board. The Board has not approved the promotion of the petitioner to the post of Senior Accounts Clerk and consequently under order dated 30th January, 1986 he was ordered to be reverted to the post of junior accounts clerk. The petitioner filed the present petition praying for direction to respondent No.1 to allow the petitioner to serve on the post of senior accounts clerk by quashing the order of his reversion.

2. The writ petition is contested by the respondents, and detailed reply has been filed. After going through the reply filed by the respondents and the averments made therein I find that the petitioner has not truly given out the facts of the case. Not only this, he has deliberately concealed the facts from this Court, which I will deal with in the later part of this judgment.

3. Learned counsel for the petitioner contended that reversion of the petitioner is wholly arbitrary. It has next been contended that many other persons in the office of the District Panchayat whose promotion has not been approved by the Selection Board were continued and as such discrimination is made in his case. It has further been contended that the reversion of the petitioner is contrary to the principles of natural justice. On the other hand Mr. D.A. Bambania, learned counsel for the respondents, contended that the service record of the petitioner was not unblemished. He contended that looking to the service record of the petitioner the Selection Board has not committed any illegality in not approving the promotion of the petitioner. It has next been contended that this Court will not sit as appellate authority over the decision of the Service Selection Board not to approve the promotion of the petitioner. Confidential Report of the petitioner for the year 1984-85 was not good. He was removed from service under order dated 12th July, 1976. He filed appeal against the said order. The Gujarat Civil Services Tribunal remanded the matter back to respondent No.1. The charges levelled against the petitioner were proved, but the penalty of removal was substituted by lesser penalty. In view of these facts, learned counsel for the respondent contended

that no interference of this court is called for.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I find that it is a case where the petitioner has made attempt to conceal material facts from this Court. The petitioner has concealed the fact that penalty of removal from service was imposed on him, which order has been set aside by the Tribunal and on remand the competent authority substituted the penalty of removal from service by some lesser penalty. These facts remain uncontroverted by the petitioner. The petitioner should have stated these facts in the writ petition. Concealment of the same disentitle the petitioner from getting any equitable relief from this court. Be that as it may. Otherwise also the petitioner has no case whatsoever in his favour. His confidential report for the year 1984-85 is not good, and I do not find any illegality in the decision of the Selection Board not to approve his promotion. Temporary promotion given to the petitioner was subject to the approval of the Selection Board and naturally when his promotion was not approved, as a consequence reversion is to follow. The order of reversion does not suffer from any infirmity. No notice of personal hearing is required to be given to the petitioner. The decision of selection Board is not open to judicial review of this Court because it is a decision taken by the Board which consists of experts. Judicial review of such decision is permissible only when there are allegations of mala fides against the members of the Selection Board. It is not the case here.

4. The ground of discrimination raised by the learned counsel for the petitioner is also devoid of any substance. Firstly, the cases of promotion to the post of Deputy Accountant, a higher post than the post of Senior Accounts Clerk cited. So far as the case of Lakhaji Bariya is concerned, it is of little help to the petitioner on the basis of his own pleadings. What the petitioner has stated is that no sanction has been sought for regularising his( Lakhaji Bariya) promotion. This cannot be equated with his own promotion. Second is the case where promotion was not approved, but the reversion has been challenged by the person concerned before this Court and interim order has been granted and that person is continued under the interim order. The last case is of Niranjana Patel who has been promoted to the post of Deputy Accountant on temporary basis and his case also is said to be not sanctioned by the Selection Board. It is true that these averments are not controverted by the respondents, but this ground is also of little help to the petitioner. It is an illegal action of the respondents on the basis of which no plea of discrimination can be raised by the petitioner. Particular

order passed by the respondents in case of similarly situated another person if not legal can never be a ground for issuing writ in favour of the petitioner. Reference in this respect may be made to the decision of the supreme Court in the case of Chandigarh Administration vs. Jagjit Singh, AIR 1995 SC 705 and the decision of this Court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat, reported in 1995(2) GLH 228.

5. In the result this writ petition fails and the same is dismissed. Rule discharged, with cost of Rs.2,000/-